

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

76 M.S.P.R. 625

Docket Number CB-1208-97-0052-U-3

SPECIAL COUNSEL, ex rel. JOYCE FEILKE, Petitioner,

v.

DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS, Respondent.

Date: NOV 25, 1997

Karen D. Kline, Esquire, Washington, D.C., for the petitioner.

Joe Davis, Esquire, Arlington, Virginia, for the agency.

BEFORE

Ben L. Erdreich, Chairman
Beth S. Slavet, Vice Chair
Susanne T. Marshall, Member

OPINION AND ORDER

Pursuant to 5 U.S.C. § 1214(b)(1)(B), the Office of Special Counsel (OSC) requests an extension of a previously-granted stay of the termination of employment of Joyce Feilke while OSC awaits the agency's response to its request that the agency take corrective action. For the reasons given below, the stay is extended up to and including January 10, 1998.

BACKGROUND

On August 28, 1997, Vice Chair Beth S. Slavet granted OSC's request for a 45-day stay of the termination of Ms. Feilke from her TP-1701-EM position of Guidance Counselor at W.T. Sampson High School, Guantanamo Bay Naval Base, Cuba. The Vice Chair found that OSC alleged facts and circumstances to show that the requested stay was appropriate, and ordered the agency to return Ms. Feilke to her position. See *Special Counsel ex rel. Feilke v. Department of Defense Dependents Schools*, MSPB Docket No. CB-1208-97-0052-U-1 (Aug. 28, 1997). Prior to the expiration of the initial stay, on September 22, 1997, OSC filed a request with the Board for an indefinite extension of the stay. The Board extended the stay for 45 days, through November 26, 1997, in order to allow OSC additional time to receive the agency's response to its request that the agency take voluntary corrective action. See *Special Counsel ex rel. Feilke v. Department of Defense Dependents Schools*, MSPB Docket No. CB-1208-97-0052-U-2 (Oct. 8, 1997).

OSC now requests that the Board grant a further extension of the stay because it granted the agency additional time to respond to its letter requesting corrective action. OSC asserts that if a response is not received, it intends to file a petition for corrective action with the Board by December 11, 1997. Stay File (U-3), Tab 1. The agency has not opposed extension of the stay.

ANALYSIS

A stay granted pursuant to 5 U.S.C. § 1214(b)(1) is issued in order to maintain the *status quo ante* while OSC and the agency involved resolve the disputed matter. The purpose of a stay is to minimize the consequences of an alleged prohibited personnel practice. See *Special Counsel v. Department of Veterans Affairs*, 60 M.S.P.R. 40, 41 (1993). The Board will view the record in the light most favorable to OSC and will grant an extension of the stay provided OSC's prohibited personnel practice claim is not clearly unreasonable. See *Special Counsel v. Federal Emergency Management Agency*, 44 M.S.P.R. 544, 546 (1990).

The evidentiary record has not changed since the Board extended the initial stay for an additional 45 days. See *Special Counsel v. Department of Veterans Affairs*, 60 M.S.P.R. 40, 41 (1993) (no change in the record is a factor in favor of extending a stay). In its request for an extension of the stay, OSC asserts that, during the time the previous stay was in effect, it granted the agency's request for additional time to reply to its request for voluntary corrective action. See Stay File (U-3), Tab 1 at 2. OSC further claims that, although the agency did not respond by the date upon which the parties had agreed, OSC has been informed by the agency that a response has been drafted, but has not yet been approved. *Id.* The agency does not rebut these assertions. In addition, OSC represents that, if the agency does not respond to its letter, it intends to file a petition for corrective action by December 11, 1997.

Because the agency does not oppose OSC's request, and the Board previously found that OSC's claim that the agency committed a prohibited personnel practice in terminating Ms. Feilke is not clearly unreasonable, we find that an extension of the stay for 45 days is warranted. See 5 U.S.C. § 1214(b)(1)(B) (the Board may extend a stay for any period which it considers appropriate).

ORDER

Accordingly, pursuant to 5 U.S.C. § 1214(b)(1)(B), a 45-day extension of the stay is hereby GRANTED. It is further ORDERED that:

- (1) The terms and conditions of the stay issued on August 28, 1997, are extended through Saturday, January 10, 1998;
- (2) Within 5 working days of this Order, the agency shall submit evidence to the Clerk of the Board showing that it has complied with this Order;
- (3) Any request for an extension of the stay pursuant to 5 U.S.C. § 1214(b)(1)(B) must be received by the Clerk of the Board, together with any evidentiary support, on or before December 27, 1997; and

(4) Any comments on such a request that the agency wants the Board to consider pursuant to 5 U.S.C. § 1214(b)(1)(C) must be received by the Clerk of the Board together with any evidentiary support, on or before January 5, 1998.

For the Board
Robert E. Taylor, Clerk
Washington, D.C.